MAY 1 1974

MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-1575

JOHN D. CALLAHAN, ET AL., *Petitioners,*

v.

CHARLES E. KIMBALL, ET AL., *Respondents.*

MEMORANDUM OF RESPONDENTS IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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Respondents submit that Petitioners' Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit should be denied for the following reasons:

1. The opinion of the Court of Appeals for the Ninth Circuit expressly and correctly relies on important Indian law principles recently established by this Court in *Menominee Tribe* v. *United States*, 391 U.S. 404 (1968).

2. The opinion of the Court of Appeals for the Ninth Circuit is of narrow applicability. This case is not of national importance and affects only the Klamath Indians who were subject to the Klamath Termination Act, 25 U.S.C. §§ 564-564x.

3. Petitioners' reliance on an alleged conflict between the Court of Appeals for the Ninth Circuit and the Oregon Court of Appeals (Petition, p. 4) as a reason the writ should be granted is improper. No such conflict exists because the Oregon Court of Appeals decision relied on the lower court ruling in this case which was subsequently reversed by the Court of Appeals for the Ninth Circuit. Moreover, even if there exists such a conflict, it is not between two federal courts of appeal and thus is not a proper ground for granting a writ of certiorari, under Rule 19, Rules of the Supreme Court of the United States.

4. Petitioners' undocumented allegation (Petition, p. 6) that respondents' hunting and fishing treaty rights have been sold by respondents is unsupported by the record and furthermore was rejected by the Court of Appeals for the Ninth Circuit (Petition, Appendix A, fn. 9, p. 21).

The issuance of the mandate of the Court of Appeals for the Ninth Circuit in this case has been vacated pending a determination by this Court of Petitioners' Petition for a Writ of Certiorari. As a result, respondents

request this Court to render its decision as soon as is practicable.

For the above reasons, respondents submit that the Writ of Certiorari should be denied.

Respectfully submitted,

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